

HOUSE BILL No. 1153

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-15-2-35.

Synopsis: State employee complaint procedures. Eliminates a provision that requires an employee to submit a written complaint to the employee's immediate supervisor if discussions with the supervisor have not resolved the issue that is the subject of the complaint. Requires only the appointing authority (not the appointing authority's designee) to direct any investigation into a complaint. Provides that an employee may submit a complaint to the state employees appeals commission (SEAC), instead of the state personnel director, if the appointing authority does not act within a certain period of time or if the appointing authority's decision is not agreeable to the employee. Provides that an employee may submit the decision of the SEAC to judicial review or to binding arbitration.

Effective: July 1, 2007.

Cheney

January 11, 2007, read first time and referred to Committee on Labor and Employment.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1153

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-15-2-35, AS AMENDED BY P.L.222-2005,
2 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2007]: Sec. 35. (a) This section does not apply to an employee
4 who has been suspended or terminated by the ethics commission.

5 (b) Any regular employee may file a complaint if the employee's
6 status of employment is involuntarily changed or if the employee
7 deems conditions of employment to be unsatisfactory. However, the
8 complaint procedure shall be initiated as soon as possible after the
9 occurrence of the act or condition complained of and in no event shall
10 be initiated more than thirty (30) calendar days after the employee is
11 notified of a change in the status of employment or after an
12 unsatisfactory condition of employment is created. Failure to initiate
13 the complaint procedure within this time period shall render the
14 complaint procedure unavailable to the employee. The following
15 complaint procedure shall be followed:

16 Step I: The complaint procedure shall be initiated by a discussion of
17 the complaint by the employee and the employee's immediate

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supervisor and, if a mutually satisfactory settlement has not been made within two (2) consecutive working days, the complaint may be referred to Step II.

Step II: The complaint shall be reduced to writing and presented to the intermediate supervisor. If a mutually satisfactory settlement has not been reached within four (4) consecutive working days, such complaint may then be referred to the appointing authority. Step III: **appointing authority.** The appointing authority or the appointing authority's designee shall hold a hearing, if necessary, and conduct whatever investigation the appointing authority or the appointing authority's designee considers necessary to render a decision. The appointing authority or the appointing authority's designee must render a decision in writing not later than ten (10) business consecutive working days from the date of the hearing, if applicable, or close of the investigation, whichever occurs later. If the appointing authority or the appointing authority's designee does not find in favor of the employee, the complaint may be submitted within fifteen (15) calendar days to the state personnel director. The director or the director's designee shall review the complaint and render a decision not later than fifteen (15) calendar days after the director or the director's designee receives the complaint.

Step III: If a decision has not been made by the appointing authority within ten (10) consecutive working days or, if the decision of the appointing authority is not agreeable to the employee, an appeal may be submitted by the employee in writing to the commission not later than fifteen (15) calendar days from the date the employee has been given notice of the action taken by the personnel director or the director's designee. After submission of the appeal, **acting authority. If an employee elects to submit the appeal to the commission,** the commission shall, prior to rendering its decision, grant the appealing employee and the appointing authority a public hearing, with the right to be represented and to present evidence. With respect to all appeals, the commission shall render its decision within thirty (30) days after the date of the hearing on the appeal. If the commission finds that the action against the employee was taken on the basis of politics, religion, sex, age, race, or because of membership in an employee organization, the employee shall be reinstated **to the employee's position** without loss of pay. In all other cases, **unless judicial review of the decision is requested in accordance with IC 4-21.5-5, or the employee appeals to binding arbitration,** the appointing authority shall follow the **recommendation decision** of the commission, which may include reinstatement and payment of salary

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or wages lost by the employee, which may be mitigated by any wages the employee earned from other employment during a dismissed or suspended period. **An employee may elect to submit the decision of the commission to arbitration.** If the recommendation decision of the commission is not agreeable to the employee, the employee, within fifteen (15) calendar days from receipt of the commission recommendation, may elect to submit the complaint to arbitration. The cost of arbitration shall be shared equally by the employee and the state of Indiana. The commissioner of labor shall prepare a list of three (3) impartial individuals trained in labor relations; and from this list each party shall strike one (1) name. The remaining arbitrator shall consider the issues which were presented to the commission and shall afford the parties a public hearing with the right to be represented and to present evidence. The arbitrator's findings and recommendations shall be binding on both parties and shall immediately be instituted by the commission.

Step IV: If an employee elects to submit the appeal to arbitration, an arbitrator must be selected from:

- (1) the American Arbitration Association; or
- (2) the Federal Mediation and Conciliation Service, if an arbitrator is not available from the American Arbitration Association;

according to selection procedures established by the arbitrator's association or service. The costs of the arbitration under this STEP shall be shared equally by the employer and the employee or the employee's representative. The decision of the arbitrator is final and binding, subject to the Uniform Arbitration Act.

(c) The decision of the commission under Step III is a final order subject to judicial review in accordance with IC 4-21.5 or binding arbitration in Step IV. The commission's decision in Step III is binding unless a party requests judicial review or the employee submits the decision to binding arbitration in Step IV.

(d) An employee who files a complaint under subsection (b) may choose a representative who is inside or outside of the employee's agency or facility to represent the employee throughout the complaint procedure.

(e) If, at a point in the complaint procedure in Step III, the employer does not comply with the timeline set forth in subsection (b), the employee's complaint proceeds to the next step of the complaint procedure.

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